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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/730,690

12/08/2003

Michael Miller

1194.1101101

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7590

06/01/2007

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EXAMINER

JAWORSKI, FRANCIS J

ART UNIT

PAPER NUMBER

3768

MAIL DATE

DELIVERY MODE

06/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/730,690

Applicant(s)

MILLER, MICHAEL

Examiner

Jaworski Francis J.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/23/07 RCE.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13-26, 28-51 and 53-61 is/are pending in the application.
- 4a) Of the above claim(s) 1-11, 13-26 and 28-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 49-51, 53-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

Claims 49 – 51, 53 – 61 are actively under examination in this case; Claims 1 – 11, 13 – 26 and 28 – 48 stand withdrawn with traverse; Claims 12, 27 and 52 have been cancelled.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 49 – 51, 53, 55-61 as amended are rejected under 35 U.S.C. 103(a) as being unpatentable over Sekins et al (US5562608). Sekins et al in its Fig. 1 and attendant col. 11 – 12 description is directed to a dual inflation cuff endobronchial catheter for liquid lung hyperthermia therapy in which the positioning of the catheter overall may be by diagnostic ultrasound, understood by later 'Example 8' col. 35 to 36 bridging portion to pertain to inter alia a conventional body surface ultrasound diagnostic scanner operating on echo backscatter. Sekins et al does not literally state that the movement inducing means which therein would be relatable as the syringe or handpump connected to the cuff 40, 42 proximal inflation ports 62 which inflate or cause relative expansion movement of the sealing cuffs are adapted for repeated inflation and deflation however it is submitted that this would be the essential nature of an inflating syringe or handpump which has to deflate at least once in order that the tube apparatus not be left stuck in the lungs. Additionally whereas the extracorporeal ultrasound

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applicator is not stated to be adapted or placed for specifically locating this tube applicator as opposed to monitoring of the overall insufflation site, since the analogous ultrasound applicators 66, 68 are placed intracostally for ultrasound treatment targeting of this overall site and since the cuffs 40 and 42 are analogously filled with the fluid to be heated as are the lungs, at least some tube apparatus siting visualization would occur.

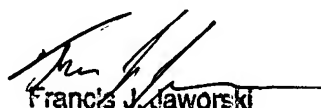
Regarding claim 55, Sekins et al is operable with at least one cuff in which case there would be a single inflating lumen, and with respect to claims 56 – 58 in the case of three or more such balloon cuffs there need not be a surface lumen associated with a particular intercuff surface..

Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sekins et al as applied to claim 49 above, and further in view of Crowley et al US5588432 or Cockburn et al US5549112 since either of the latter teach that it is desirable to locate an instrument distal end within the body and this can be done by Doppler effect using a vibrational PVDF material for the balloon col. 23 of the former or by vibration of the fluid column in the instrument per the latter

Any inquiry concerning this communication should be directed to Jaworski Francis J. at telephone number 571-272-4738.

FJJ:fjj

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Francis J. Jaworski
Primary Examiner